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Jan. 20 188

14-689

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 380.

WILLIAM P. MASON AND WALTER C. CABOT, PLAINTIFFS IN ERROR,

vs.

JOHN SARGENT, LATE COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 18, 1881.

tion of the lands was, in effect, nothing more than a recognition of the plain proposition that the State of Wisconsin had been empowered ever since 1856, to make any such application of the lands as had seemed good to her, the United States being merely trustees therefor.

Upon the case made by the record so soon as the lands came into private hands, the equity of the claimants on account of the 61.6 miles of finished road, could have been enforced against them. This was probably foreseen by the Mortgage Land Company, and led to the quit-claim transfer of September, 1868.

The case then ~~seems to be~~ that, for purposes which seemed good to them, the company and the State conveyed for the benefit of parties who had given mortgages in aid of the construction of the company's road certain lands granted by Congress upon condition; The upshot seems to be that the transaction has cost the United States as much as if the lands had been directly conveyed to the company; also, that the general policy in connection with such grants has been observed; and the company has waived its own immediate rights in favor of parties who were not strangers to its interests, and who probably had special claim upon it for good treatment.

Upon the merits, I submit that the United States have established against the claimant a right at least for a part of their road to the privilege due from land grant companies.

S. F. PHILIPS,
Solicitor-General.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you between William P. Mason, of Boston, in the commonwealth of Massachusetts, and Walter C. Cabot of Brookline, in said commonwealth, plaintiffs, and John Sargent, of Cambridge, in said commonwealth, formerly collector of the internal revenue of the United States for the fourth collection district of Massachusetts, defendant in an action of contract, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

T. L. NELSON,
District Judge U. S., Mass. Dist.

2 Circuit court of the United States, district of Massachusetts, ss.

And now, here, the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this eleventh day of September, A. D. 1879.

[SEAL.] JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, the fifteenth day of said October happening on a Sunday.

Before the honorable George F. Shepley, circuit judge.

WILLIAM P. MASON, OF BOSTON, IN THE county of Suffolk, and Walter C. Cabot, of Brookline, in the county of Norfolk, plaintiffs.
v.
JOHN SARGENT, OF CAMBRIDGE, IN THE county of Middlesex, defendant.
On an action of contract

4 *Declaration.*

And the pl'ffs say the def't owes them two thousand two hundred and eighty-seven dollars for money received by the def't for the pl'ffs' use. And the pl'ffs say that they were assessed upon the fifth day of May, A. D. 1873, by Jonathan H. Mann, assessor of the fourth district of commonwealth of Massachusetts, an internal-revenue tax of two thousand two hundred and forty dollars upon legacies bequeathed by said will to said Wm. P. Mason, and to Elizabeth R. Cabot, to take effect upon the death of Hannah B. Mason, wife of the testator, which they afterwards, on May 13, 1873, paid to defendant, collector of internal revenue of said district; that said payment was made under protest and to avoid distraint or other forcible process to collect the same, the said legatees protesting that the said tax was not due from them, for the reason that it had not accrued to the United States at the time the repeal of the legacy duties act went into effect; that said pl'ffs made a claim for refunding the same on May 19, 1873, to J. W. Douglass, the Internal
Revenue Commissioner of the United States, on the ground that
5 the assessment and payment of said tax was erroneous and im-
proper for the following reasons, to wit: That the said legacies did not vest in possession to the legatees aforesaid until the death of the wife of the testator on the 19th day of June, A. D. 1872, after the repeal of said act, which took effect October 1, 1870, and that said tax had not therefore accrued at the time of said repeal's going into effect. Further, that on the twenty-fourth day of July, A. D. 1873, said commissioner notified pl'ffs that said claim was rejected. And the pl'ffs claim that in view of the premises def't owes them said sum of two thousand two hundred and forty dollars.

Bill of particulars.

1. May 13, 1873, money paid by pl'ffs as trustees under will of Wm. P. Mason, deceased, to def't as collector of internal revenue of fourth district of Massachusetts, as legacy duties, the same being paid under protest and under threat of forcible process, and not being lawfully due to the United States..	$2, 240 00
2. Interest from May 13, 1873 to date of writ Sept. 20, 1873.	47 60
	$2, 287 60

6 To the damage of the said plaintiffs (as they say) the sum of

four thousand dollars. The writ in this cause is dated the twentieth day of September, A. D. 1873, and is made returnable before the justices of the superior court of the commonwealth of Massachusetts then next to be holden at Boston, on the first Tuesday of October, A. D. 1873. This cause was removed from said superior court to this circuit court by writ of certiorari, dated the fourteenth day of October, A. D. 1873, and made returnable before this circuit court on the fifteenth day of October, A. D. 1873. This cause was duly entered here at the May term of this court, A. D. 1873, and was *was* thence continued to the October term of this court, A. D. 1873, when due return was made of said writ of certiorari, and the parties appeared by their respective attorneys. This cause was thence continued from term to term to the May term of this court, A. D. 1875, when the following agreed statement of facts was filed, namely:

Agreed facts.—Filed July 2, 1877.

This is an action brought in the State court, and removed by
7 the defendant to this court by certiorari to recover back a legacy
tax paid under protest to defendant as collector of internal revenue for the fourth Massachusetts district. The writ is dated November 20, 1873.

William P. Mason, the plaintiff's testator, died December 4, 1867. By his will, duly proved and allowed, the personal property upon which the tax in question was levied was bequeathed to plaintiffs in trust for his widow for her life, and upon her death one-half to the plaintiff William P. Mason, and one-half to Elizabeth R. Cabot, children of the testator of full age at his death.

The widow died on June 17, 1872.

In April, 1873, the tax in question was assessed by Jonathan H. Mann, assessor of said district, and May 13, 1873, plaintiffs paid defendant said tax under protest to avoid distraint or other forcible process to collect the same.

May 19, 1873, plaintiffs duly made claim upon the Commissioner of
Internal Revenue for the refunding of said tax, for the reason
8 that the said property did not vest in possession in the plaintiffs,
cestuis que trustent until the death of the testator's widow, which occurred after October 1, 1870, the date at which the repeal of the legacy succession tax went into effect, and that the tax had not accrued at said date so as to come within the saving clause of the act of repeal. (Act of July 14, 1870, section 17.)

August 5, 1873, the Commissioner of Internal Revenue rejected the appeal, "for the reason that the tax accrued under the 128' section of the act of June 30, 1864, and was saved by section 17 of the act of July 14, 1870, and still existing, were properly assessed."

If upon the above facts the court are of opinion that the tax was wrongfully assessed and collected, judgment is to be entered for the plaintiffs for twenty-two hundred and forty dollars, with interest from May 3, 1873; otherwise, judgment for defendant.

Russell & Putnam, for plaintiffs; George P. Sanger, U. S. att'y, for defendant.

This cause was thence continued from term to term to this present
term. And now, to wit, on this twenty-fifth day of January, A.
9 D. 1877, the cause is set down for hearing and the same is fully
heard upon the agreed statement of facts aforesaid, and after mature deliberation in the premises, judgment is ordered for the said

defendant, with costs. It is therefore considered by the court, on this thirteenth day of April, A. D. 1877, that the said defendant recover of the said plaintiffs his costs of suit, taxed at thirty-seven dollars and seventeen cents.

A true record.

Attest:

JOHN G. STETSON, *Clerk.*

10 The following is the opinion of the court upon which judgment was entered for the defendant April 13th, A. D. 1877.

Circuit court of the United States, district of Massachusetts.

WILLIAM P. MASON ET AL., PLAINTIFFS,
v.
JOHN SARGENT, DEFENDANT.

Opinion of the court.

SHEPLEY, J.:

This action is brought to recover a legacy tax paid under protest by plaintiffs to the defendant as collector of internal revenue for the fourth Massachusetts district.

William P. Mason, the plaintiffs' testator, died December 4, 1867. By his will the personal property, upon which the tax in question was levied, was bequeathed to the plaintiffs in trust for his widow during her life, and upon her death one-half to his son, William P. Mason, 11 and one-half to his daughter, Elizabeth R. Cabot, both being of full age at the time of his decease. The widow died June 17, 1872.

In April, 1873, the tax in question was assessed by the assessor of internal revenue for said district upon the ground that the 17th section of chapter 255, act of July 14, 1870. exempted this tax as "an accrued right" from the operation of the third section of the same act which repealed the special tax on legacies and successions from and after the first day of October, eighteen hundred and seventy. Plaintiffs to avoid distraint paid the tax under protest that the property did not vest in the plaintiffs' cestui que trust in possession until the death of testator's widow, which occurred after October first, 1870, the date at which the repeal of the legacy-tax took effect, and that the tax had not accrued October first, 1870, so as to be within the saving clause of the seventeenth section of the act of repeal. Plaintiffs duly claimed of the Commissioner of Internal Revenue the refunding of the tax for the reasons above stated. The commissioner rejected the appeal upon the 12 ground that the tax accrued under the act of June 30, 1864, and was saved by section 17 of the act of July 14, 1870.

Plaintiffs thereupon commenced this action for the sum of two thousand two hundred and forty dollars with interest from May 13, 1873, and the case is submitted to the court upon the foregoing facts, which are agreed by the parties.

By the provisions of the 124th section of chapter 173, act of June 30, 1864, "any person or persons having in charge or trust as administrators, executors, or trustees any legacies or distributive shares arising from personal property where the whole amount of such personal property as aforesaid shall exceed the sum of one thousand dollars in actual

value, passing after the passage of this act, from any person possessed of such property, either by will or the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons or to any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made
13 subject to a duty or tax to be paid to the United States as fol-
lows," &c.

The 125th section provided that the tax or duty should be a lien on the property of every person who should die as aforesaid, for twenty years, or until the same within that period be paid to the United States. The act of July 13, 1866, ch. 184, sec. 9, 14 Stat. at Large, 140, while retaining the lien given by the 125th section of the act of June 30, 1864, provided that "the tax or duty aforesaid shall be due and payable whenever the party interested in such legacy or distributive share of property or interest aforesaid shall become entitled to the possession or enjoyment thereof, or to the beneficial interest of the profits accruing therefrom." It also made it the duty of the executor, administrator, or trustee having in charge or trust any such legacy or distributive share of an estate, to give notice thereof to the assessor or assistant assessor of the district within thirty days after he shall have taken charge of the trust. The third section of chapter 255, act of July 14, 1870, repealed the tax on legacies and successions from and after the
14 first day of October, 1870. The seventeenth section of the same
act continued the former acts in force "for levying and collecting all taxes properly assessed or liable to be assessed or accruing under the provisions of former acts," and "for maintaining and continuing liens, &c., incurred under and by virtue thereof," and further provided that the act of repeal "should not be construed to affect any act done, right accrued, or penalty incurred under former acts," but every such right was expressly saved.

The tax upon a pecuniary legacy under the provisions of these statutes must be taken to have accrued immediately upon the death of the testator, though not due and payable until the party interested in the legacy becomes entitled to the possession or enjoyment thereof or the beneficial interest in the profits accruing therefrom. The lien of the United States for the tax attached to the fund in the hands of the executors and trustees as soon as they entered upon the trust. This lien was maintained and continued by the provisions of the 17th section until the tax, the right to which accrued at the death of the tes-
15 tator, became due and payable after the death of the widow, when
the children became entitled to the possession and enjoyment of the fund. It was determined in May et al. v. Slack, 16 Int. Rev. Rec., 134, that the tax is to be taken to accrue upon a pecuniary legacy immediately upon the death of the testator, though not payable until the legacy is payable. If the tax accrued before October 1, 1870, it was within the exceptions of the 17th section and was properly collected and cannot be recovered.

Plaintiff non suit. Judgment for defendant, with costs.

16 UNITED STATES OF AMERICA,
Massachusetts District, *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the district of Massachusetts, within the first judicial circuit, certify that the foregoing is a true copy of the record of said circuit court in the cause of William P. Mason et al., plaintiffs, v. John Sargent, defendant, lately determined in said circuit court, and of all proceedings therein, and of the opinion of the court.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this eleventh day of September, A. D. 1879, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN G. STETSON, *Clerk.*

17 The United States of America to John Sargent, of Cambridge, in the commonwealth of Massachusetts, formerly collector of the internal revenue of the United States for the fourth collection district of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein William P. Mason, of Walpole, in the State of New Hampshire, and Walter C. Cabot, of Brookline, in the commonwealth of Massachusetts, plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas L. Nelson, district judge of the United States, this twelfth day of April, in the year of our Lord one thousand eight hundred and seventy-nine,

T. L. NELSON,
U. S. District Judge, Mass. Dist.

APRIL 12, 1879.

Due and legal service of the within citation is hereby accepted.

GEORGE P. SANGER,
U. S. Att'y.

(Stamp:) United States attorney's office, 140 Tremont st., Boston, Mass., Ap. 12, 1879.

18 *Bond on writ of error.*

Know all men by these presents that we, William P. Mason, of Walpole, in the State of New Hampshire, and Walter C. Cabot, of Brookline, in the commonwealth of Massachusetts, as principals, and Charles Henry Parker and George P. Gardner, both of Boston, in said commonwealth, as sureties, are held and firmly bound unto John Sargent, of Cambridge, in said commonwealth, formerly collector of the internal revenue of the United States for the fourth collection district of Massachusetts, in the full and just sum of two hundred dollars, to be paid to the said John Sargent, certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the tenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a circuit court of the United States within and for the district of Massachusetts, in a suit depending in said court between said William P. Mason and Walter S. Cabot, plaintiffs, and said John Sargent, defendant; judgment was rendered against the said plaintiffs, and the said plaintiffs having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next.

Now the condition of the above obligation is such that if the said plaintiffs shall prosecute their said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

WILLIAM P. MASON. [L. S.]
WALTER C. CABOT. [L. S.]
CHAS. HENRY PARKER. [L. S.]
GEORGE P. GARDNER. [L. S.]

Signed, sealed, and delivered in presence of—

Approved.

T. L. NELSON,
District Judge U. S., Mass. Dist.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

19 Supreme Court of the United States, of term, in the year of our Lord 1879.

WILLIAM P. MASON ET AL.
vs.
JOHN SARGENT.

Afterwards, to wit, on the day of , in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said William P. Mason and , by George Putnam, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: that the judge erroneously decided that the legacy tax sought to be recovered in this action had accrued to the United States before the third section of chap. 255, act of July 14th, 1870, repealing the tax on legacies and successions from and after the first day of October, 1870, went into effect; and the said William P. Mason and

20 pray that the judgment aforesaid may be reversed, annulled and altogether held for nought, and that they may be restored to all things which they have lost by reason of said judgment.

By their attorney:

GEO. PUTNAM.

(Indorsed:) 1879. October term. William P. Mason et al. vs. John Sargent. No. 996. Assignment of errors. Filed 18th October, 1879.

(Indorsement on cover:) No. 380. William P. Mason and Walter C. Cabot, plaintiffs in error, vs. John Sargent, late collector of internal revenue. Massachusetts C. C., U. S. Filed 18th October, 1879.

SUPREME COURT U.S.
FILED
JAN 6 1882
JAMES H. McKENNEY, CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1881.

WM. P. MASON ET AL., *Plaintiffs in Error*,
v.
JOHN SARGENT, COLLECTOR, *Defendant in Error*.

No. 380.

PLAINTIFFS' BRIEF.

EXTRACTS FROM U. S. STATUTES.

VOL. 13, p. 285, 1864, Ch. 173.

SECT. 124.—*And be it further enacted*, That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property, as aforesaid, shall exceed the sum of one thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any state or territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States. . . .

SECT. 125.—*And be it further enacted*, That the tax or duty aforesaid * shall be a lien and charge upon the property of every person who may die as aforesaid, for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States*; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the assessor or assistant assessor of the said district a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue, thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the commissioner of internal revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement, said collector or deputy collector shall grant to such person, paying such duty or tax, a receip or receipts for the same in duplicate, which shall be prepared as hereinafter provided. . . .

---

* Amendment, *infra*.

VOL. 14, p. 140, 1866, Ch. 184.

That section one hundred and twenty-five be amended by inserting after the words "that the tax or duty aforesaid," the following: "shall be due and payable whenever the party interested in such legacy or distributive share or property or interest aforesaid shall become entitled to the possession or enjoyment thereof, or to the beneficial interest in the profits accruing therefrom, and the same"; and by inserting after the words "United States" in the first sentence of said section, the words: "and every administrator, executor, or trustee, having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof in writing to the assessor or assistant assessor of the district where the deceased grantor or bargainer last resided, within thirty days after he shall have taken charge of such trust"; . . .

Any tax paid under the provisions of sections one hundred and twenty-four and one hundred and twenty-five shall be deducted from the particular legacy or distributive share on account of which the same is charged.

VOL. 16, p. 261, 1870, Ch. 255.

SECT. 17.—*And be it further enacted*, That sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of the act of June 30, 1864, entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," as amended by the act of July 13, 1866, and the act of March 2, 1867, shall be construed to impose the taxes therein mentioned to the first day of August, 1870, but after that date no further taxes shall be levied or assessed under said sections; and all acts and parts of acts relating to the taxes herein repealed, and *that* all the provisions of said acts, shall continue in full force for levying and collecting all taxes properly assessed or liable to be assessed, or accruing under the provisions of former acts, or drawbacks, the right to which has already accrued, or which may hereafter accrue under said acts, and for maintaining and continuing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved. And for carrying out and completing all proceedings which have been already commenced or that may be commenced to enforce such fines, penalties and forfeitures, or criminal proceedings under said acts, and for the punishment of crimes of which any party shall be or has been found guilty.

Supreme Court of the United States.

No. 380. **OCTOBER TERM, 1881.**

William P. Mason et al., *Plaintiffs in Error*,

v.

John Sargent, *Collector*, *Defendant in Error*.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

William P. Mason died Dec. 4, 1867, and plaintiffs in error are the executors of his will.

By his will certain personal estate was bequeathed to plaintiffs in trust for his widow for life and after her death to his son and daughter in equal shares.

The widow died June 17, 1872.

In April, 1873, a legacy tax was assessed by the United States assessor upon the said property as upon a legacy to said son and daughter; and was paid under protest by plaintiffs to defendant as collector.

Plaintiffs duly made claim upon the commissioner of internal revenue for the refunding of the tax upon the ground that it had not accrued to the United States when the Act of July 14, 1870, repealing the succession and legacy taxes among others, went into effect. The commissioner rejected their claim, upon the ground that the tax had accrued to the United States when the repeal went into effect and was saved by Sect. 17 of the repealing act.

Plaintiffs then brought this suit to recover the tax. The case was heard upon agreed facts, judgment was entered in the Circuit Court for defendant, and plaintiffs sued out the writ of error now before the court.

ERROR ASSIGNED.

That the circuit judge erroneously decided that the tax in question had accrued to the United States before the Act of July 14, 1870, repealing the tax on legacies, went into effect.

BRIEF.

The Internal Revenue Act of 1864, c. 173, § 124, 13 Stats., p. 285, provided that " any persons having in charge or trust as administrators, executors, or trustees, any legacies or distributive shares arising from personal property . . . passing . . . from any person possessed of such property," either by will or intestate laws, . . . or any personal property conveyed by deed or other instrument, to take effect, in possession or enjoyment, after the death of the grantor, should be subject to a tax, varying in amount according to the relation between the testator or intestate or settler and the legatee or distributee or beneficiary.

Section 125 of the same act, as amended by 1866, c. 184, 14 Stats. 140, provided that the said tax should be a lien on the property of the testator or intestate for twenty years, that it should be due and payable whenever the party interested in said legacy or distributive share should become entitled to the possession or enjoyment thereof, or to the beneficial interest in the profits accruing therefrom; and that the tax should be deducted from the legacy or distributive share on account of which it is charged.

13 Stats. 286; 14 Stats. 140.

By the act to reduce internal taxes, 1870 c. 155, 16 Stats. 256, the legacy and succession taxes with many others were repealed; but § 17 of that act (16 Stats. 261) provided that all acts relating to the repealed taxes should "continue in full force for levying and collecting all taxes properly assessed or liable to be assessed or *accruing*" under former acts.

The question raised by the record is whether on Oct. 1, 1870, when the repealing act went into force, a legacy tax had already "accrued" to the United States against the plaintiffs. It will not be claimed that it was "assessed" or "liable to be assessed" before that date. Unless it had then "accrued," within the meaning of the 17th section of the repealing act, it could not be assessed afterwards upon the legacy vesting in possession in June, 1872.

I.

In the case of Clapp *v.* Mason, 4 Otto, 689, this Court decided that no tax for succession to real estate, limited by the same will in the same manner, could be assessed or collected. "It is manifest," says the Court in that case, "that the right does not accrue until the duty can be demanded, that is, *when it is made payable.*"

Unless legacy duties can be distinguished from succession duties in some point material to the reasoning of this decision, the present case must be governed by the case of Clapp *v.* Mason.

There are two points of difference between a succession tax and a legacy tax which may be relied on.

1. That the legacy tax is payable by the executor or trustee, and not by the legatee, while the succession tax is assessed upon the successor.

But as the executor does not pay the tax until the legatee's title to the legacy vests in possession, and then charges it to the legatee (14 Stats. 140), this is practically a payment by the legatee. To make the tax payable by the executor is simply a convenient mode of collection. It does not change the time when the tax accrues to the government, whatever sense may be given to the word "accrue."

2. That the estate in the legacy having once vested in remainder, the person to pay it and the percentage to be paid are fixed, and are not subject to change, as in the case of succession, by the devolution of title to persons more remotely related to the testor.

The fact that the duty on a succession vested in remainder might change, by the succession passing to a more remote relation before vesting in possession, was noticed in the case of Clapp *v.* Mason, 4 Otto, 591, but not as a ground of decision nor as an essential element in the reasoning. It was named as a reason why "the succession should not be deemed taxable until such time as the successor should be entitled to possession" (pp. 591, 592), and as a reason which may have led Congress to make the provision in the statute which describes that period as the time when the duty is to be paid, p. 592.

The next step in the reasoning is based on the statute, and is that "the right does not accrue till the duty can be demanded, that is, when it is made payable," p. 592.

Obviously the postponement by statute of the time of payment till the vesting of the succession, and not the reason for such postponement, was the ground of the decision. The reason was after all only a conjecture, and without the statute would not have led to the decision.

The same postponement was made by a later statute in the case of legacy duties (14 Stat. 140), and whatever reasons may have led Congress to enact it, its effect must be the same as in the case of successions.

The Court has decided that a succession duty does not accrue till the succession vests in possession, because the statute says it is not payable till then.

By the same reasoning a legacy duty does not accrue till the legatee's interest vests in possession, because the statute says it is not payable till then.

In short, the Court has given to the word "accruing" its plain, ordinary meaning in connection with a money claim; that is, "due and payable."

II.

In Section 125 of the Act of 1864, imposing the legacy duty, it is provided that the executor, upon payment or distribution to the legatees, shall pay the tax assessed, and also shall render to the assessor a statement of the legacy "with the amount of duty which has accrued or shall accrue thereon," and shall immediately give a duplicate of the statement and pay the tax thereon to the collector. This was before the act postponing the time of payment till the legacy vested in possession. The importance of it in this connection is that the word "accrued" is used to mean "become due and payable"; and it is reasonable to give the word the same meaning in the saving clause of the repealing act (§ 17, Stat. 1870), which it clearly bore in the act repealed.

III.

Mr. Justice Shepley, in his opinion in this case, does not give the reason of his decision. He merely says the tax must be taken to have accrued on the death of the testator, and cites May *v.* Slack, 16 Int. Rev. Rec. 134. That was the case of a direct pecuniary legacy in the will of a testator who died in February, 1870. There was no intervening life estate to postpone the legatee's right of enjoyment. The executor did not in fact pay the legacy till April, 1871, and Judge Lowell held that the time of the actual payment was unimportant, and that the tax accrued when the legatee's right the legatee. To make the tax payable by the executor is simply a convenient mode of collection. It does not change the time when the tax accrues to the government, whatever sense may be given to the word "accrue."

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The plaintiff relied on the executor's right to postpone payment for one year, and claimed that the tax did not accrue till the year had expired. But the Court said, "Though it is true in general that a legacy is not payable until a year, yet this is an equitable rule adopted only for convenience. 'There is no doubt,' said Lord Eldon, 'that the property is vested at the death of the party; and if a case was produced in which it was quite clear that there were no debts, the Court would give the funds to the party, notwithstanding there had not been a lapse of twelve months.' (Gartshore *v.* Chalie, 10 Ves. 13.)"

See also Brooks *v.* Lynde, 7 Allen, 64.

Judge Lowell rests the decision of May *v.* Slack also upon the ground that successions and legacies are meant to be put upon the same footing; and that, — as successions vest immediately on the death of the testator, — if legacies were dealt with, for the purpose of taxation, as vesting only at the end of a year, a succession duty would be saved, while the legacy duty would be lost, under identical circumstances. It is evident, therefore, that he was dealing only with the case of direct legacies and successions, and not with remainders; for in the case of remainders it is clear, under the decision of Clapp *v.* Mason, that no succession duty accrues till they vest in possession; and the same reasoning from the intention to treat legacies and successions alike, which led to the decision of May *v.* Slack in the case of a direct legacy, would lead to a decision against the government in a case like the present, of a legacy in remainder.

The case of May *v.* Slack, therefore, has no more bearing upon this case than it had in Clapp *v.* Mason, while its reasoning is in favor of the plaintiffs.

IV.

If, notwithstanding the reasoning of Clapp *v.* Mason, any argument is based by the government upon the necessity of giving some meaning to the word "accruing" in the 17th section of the repealing act which is not covered by the previous words "assessed or liable to be assessed," the answer is twofold.

1. The saving clause in the repealing act applies to a large number of repealed taxes of different kinds. As to some of them it may have been necessary to add the word "accruing" in order to save taxes which were neither assessed nor assessable on Oct. 1, 1870, and which yet Congress intended to save. It is not necessary that in the case of each one of the taxes saved some additional force should be given by the use of that word. It is enough if it was needed in any one case.

In the case of succession duties it may well have been needed. Those duties were not assessable till thirty days after the right to the succession vested in possession (14 Stats. 141). If then a succession had vested in September, 1870, the tax would not be assessable till after October 1. Yet it would perhaps have been saved to the government as a tax "accruing" before that date.

Probably other instances could if necessary be found in which taxes were saved by that word. See Meredith *v.* United States, 13 Pet. 494.

2. But the rule of construction that seeks to give a distinct value to each word of a statute is only one of many rules, and frequently has to give way to others of more importance, especially to the rule that the general intent of

the Legislature, to be found from an examination of the entire statute, is to be carried into effect if possible.

If we seek that general intent, we find that the Act of 1870 was passed for the purpose of reducing and simplifying the taxation, which, after the close of the war, was unnecessarily burdensome.

Its title is "An act to reduce internal taxes and for other purposes."

It swept away the whole mass of special taxes, except only those on tobacco, spirits and malt liquors. §§ 1, 2, 3. It also provided for the consolidation of collection districts and the discharge of assessors, so that the machinery of taxation might be contracted in proportion to the diminished work it was to perform. §§ 18, 19.

Section 17 begins by repealing certain taxes on dividends and coupons, and then proceeds with the words under construction in this case. They are as follows: "and all acts and parts of acts relating to the taxes herein repealed and all the provisions of said acts shall continue in force for *levying and collecting* all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts."

The purpose of this saving clause was not to abridge the benefit to the citizen of the sweeping repeal of future taxes, but to secure to the government its *remedies* for "*levying and collecting*" taxes to which its right was fixed.

But if the government's claim in this case is maintained, its rights are greatly enlarged by a clause intended only to save its remedies. That clause, so construed, not merely saves remedies for taxes which were already collectible, but excepts from the repeal a great mass of future taxes which may not be collectible for two generations.

For if this tax accrued against these plaintiffs during the life of the life tenant, it must have accrued immediately on the testator's death; and it follows that in all cases where a life estate in personal property was created by the deed or will of a person dying before Oct. 1, 1870, the right to a legacy duty on its termination accrued to the government against the remainder-man, and was preserved by the saving clause of the repealing act.

If, therefore, a testator died Sept. 29, 1870, leaving personal estate to a child a day old for life, with remainder over, the government had, on Oct. 1, 1870, an accrued right to a legacy tax upon the termination of the life estate, which it may enforce perhaps eighty years hence by action, and which is a lien on the property for twenty years.

In short, if defendant is right, the repeal of the legacy duties benefits only legatees of persons dying since Oct. 1, 1870.

It is impossible that Congress can have intended such a result as this.

Certainly such an intent should not be readily inferred from a clause reserving remedies in an act whose main purpose was to relieve the people from needless burdens.

Probably the collection of these taxes has already been abandoned, except in occasional isolated cases which accident or the diligence of some assessor or collector brings to notice. The present machinery is notoriously inadequate for their systematic assessment; but if the plaintiffs prevail in this case they stand as an obstacle to the settlement of estates for an indefinite period; a trap for unwary executors who may pay legacies to remainder-men, in forgetfulness or ignorance of the incompleteness of the repeal; a source of petty vexation to individual citizens without any substantial return to the government.

In the recent case of U. S. *v.* Rankin, 8 Fed. Rep. 872,

Mr. Justice Treat has ruled in comformity with the views herein maintained, declining to follow the decision of Judge Shepley in this case.

GEO. PUTNAM,
For Plaintiffs in Error.

FILED
JAN 17 1882
JAMES H. McKENNEY, Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

MASON AND OTHERS *vs.* SARGENT, COLLECTOR, &c. } No. 380.

BRIEF FOR THE COLLECTOR.

The statutes which are supposed to warrant the tax in question are given in the brief of the learned counsel for the plaintiffs in error; and also a sufficient statement of the facts.

The Opinion of the learned judge in the court below is contained in the record, on pp. 4, &c. That Opinion was rendered on the 13th of April, 1877, and probably without the advantage of having seen the decision of this court at October term, 1876, in Clapp *vs.* Mason, 94 U. S. 589; otherwise, probably it would have suggested the distinctions between that case and the present which seem pertinent to an argument sustaining the tax imposed upon the plaintiff in error.

Clapp *vs.* Mason concerned a tax upon a remainder in lands, whilst the present case concerns one imposed upon a remainder in personal estate.

At first blush it might seem that the taxing power would render a tax upon either subject liable to the same contingencies as those which affected the other; and upon repealing one would probably also repeal the other. Submitting to such a presumption, I will take Clapp *vs.* Mason as a point of departure, and inquire what, if any, material statutory distinctions exist between the subject matter of that case and this.

In the first place, it will be borne in mind that the tax upon personalty was imposed by other sections (124 and 125) of the act of 1864, ch. 173, than those which imposed the tax upon realty (126 to 150).

By section 125, the former tax was:

1. *A lien* upon the property for twenty years, if the tax were not sooner paid.
2. Payable *by the executor or administrator*, not by the legatee.
3. *Assessed* before the legacy or distributive share was paid.
4. *Paid* at the time of such assessment.

On the contrary by the various sections above cited, the latter tax was:

1. *Not* a lien.
2. Payable by the *successor.*
6. *Assessed* when the party became liable.
4. *Paid* when the successor became entitled to possession.

In this general connection, it is material to recollect that an *assent* by an executor to the particular estate in a legacy is an assent as well to that in remainder (Williams Exrs. 2d, 1180, &c); or, in other words, that an executor loses all control over the latter estate upon yielding up the former.

This may have been a reason why the framers of the act of 1864, considering the debility of things personal, chose to look to the executor or administrator for the tax upon all the successive estates that a testator or intestate might choose to limit therein; and thereupon rendered it his express duty to pay the whole tax before the thing went out of his hands, even to the first taker.

At the same time, the stability of *land* suggested a very different treatment—the details of which this court court dwell upon in Clapp *vs.* Mason.

By the act of 1864, the tax upon personalty was to be *assessed* before it went out of the hands of the executor, such assessment to "*contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest.*" [Brief for the plaintiffs.]

In the case of succession to realty upon the other hand, as it never was certain what the tax would be (section 134), until the thing had come into *actual* possession, it was only then (that is, when some one had become "liable to pay duty," section 147) that such tax was assessed.

If, then, the present was a case governed in all respects by the act of 1864, it seems clear that the repealing act would not affect the tax; which would either have been collected before the death of the widow, or would so certainly have been *due* ever since that period as probably to have occasioned no dispute.

It is said, however, that the act of 1866 [plaintiff's brief] has made a material difference upon this point.

That act provided, in substance, that taxes upon legacies shall become due *only when the latter vest in possession;* and at the same time it required an assessment thereof within thirty days after the executor had taken charge of the trust.

The question in the present case is whether the terms of the repealing act operate to discharge a tax previously thus assessed or assessable.

Upon consideration of the terms of the act of 1866, it seems evident that, whilst it postponed the time at which the tax upon legacies in remainder should be payable, special attention was given therein to *securing* the same by a more definite and earlier period of *assessment* than had been provided in the act of 1864; such assessment (by giving the names of the legatees and other data, as in the original act of 1864 the forms of which were probably to be observed in this assessment) obviating to some extent the difficulty to arise from the virtual discharge of *the executor* thenceforth from liability on that account.

In conclusion, I submit that the clause in the repealing act [plaintiff's brief], that all provisions in former acts "shall continue in full force for levying and collecting all taxes properly *assessed*, or *liable to be assessed*, or *accruing* under the provisions of former acts," plainly applies to the present tax, which, on the 14th of July, 1870, was, at all events, *liable to be assessed* and *accruing*,—and which, probably, upon ordinary presumptions as to official carefulness and performance of duty, was at that time actually *assessed*.

S. F. PHILLIPS,
Solicitor-General.

OFFICE SUPREME COURT U. S.
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OCTOBER TERM, 1881.

MASON & AL.
vs.
SARGENT, COLLECTOR.
No. 380.

Plaintiff's reply to the brief of the Solicitor-General.

The Solicitor-General's brief maintains two positions:

1st. That §§ 124, 125, of the act of July, 1864, imposed a tax upon legacies which was immediately assessable and payable, although the legacy itself might be payable only at the termination of a life estate.

2d. That the provision in the act of 1866, that the tax should be due and payable when the legacy should vest in possession, postponed only the payment and not the assessment of the tax.

He draws the conclusion that the tax in the present case was "liable to be assesed," within the meaning of the saving clause in the repealing act, at all times after the testator's death, and should have been assessed immediately, although not "due and payable" till after the death of the widow.

The suggestion at the close of his brief, that it may be presumed to have been assessed before July, 1870, was made in forgetfulness of the express finding that the tax was assessed in April, 1873.—(Record, p. 3.)

I.

The plaintiff does not need to dispute the first point. It is submitted, however, that if it become necessary to pass upon the question, §§ 124, 125, as unamended, may well have to be construed either as not imposing a tax on legacies in remainder at all, or as imposing the tax only on the vesting of the legacy, by necessary implication from the terms of the law.

There is no express language imposing the tax on estates in expectancy, as there is in the case of successions. All the provisions of both sections show that only legacies immediately payable were in the minds of the framers of the act. Moreover, the act calls for different rates of tax, varying with the relationship of the legatee. If, therefore, a bequest were made to a widow for life, with remainder in different contingencies to relations of the testator in different degrees, it would be impossible to determine the tax before the end of the life estate, and the court would be reduced to the alternative above mentioned, to decide either that legacies in remainder were not taxed, or that, *ex necessitate*, they were not taxed till they vested in possession.

This is the precise case put in the opinion in Mason vs. Clapp, to illustrate the necessity of postponing the assessment of the succession tax till the vesting of the succession.—(4 Otto, 591.)

II.

Assuming, however, that the tax was, under the original act, due and payable immediately upon the death of the testator or settlor, it is clear that, after the amendment of 1866, it was only due and payable when the legacy vested in possession, and I submit that it was not "liable to be assessed," within the meaning of the saving clause of the act of 1870, until it became due and payable.

This conclusion is involved in the reasoning of Clapp vs. Mason, and will not be disturbed by considering the meaning of section 125 as amended.

Section 125, as it originally stood, provided that the tax should be a lien for twenty years, unless sooner paid; that the executor, before distribution, should pay the collector the duty assessed; that he should render a schedule to the assessor of the amount of the legacy and duty; and that a *duplicate of the schedule should be by him delivered and the tax thereon paid to the collector.* It is plain that the payment to the collector is to be made but once, and that it is to be made immediately after assessment.

The amendment does not change the relation of assessment and payment. The duplicate schedule to the assessor and collector and the payment of the tax are still to be made as before. The only change is that the tax is not due and payable till the legacy vests in possession. It should not, therefore, be scheduled nor assessed till then. For the act distinctly requires that the assessor and collector should have duplicate schedules and that the tax should be paid according to the schedule.

At the same time with the amendment postponing the payment of legacy taxes till the vesting of the legacies, another amendment was passed providing that the executor should give the assessor "notice in writing" of all legacies, within thirty days after assuming his trust. There is no reason for supposing that this amendment had any special reference to the other. The purpose of it was to give the assessor information. The notice was not, as the Solicitor-General assumes, a schedule for taxation. Such a schedule would have to be made as before,—doubtless on a blank to be furnished by the assessor,—a duplicate, as before, would have to be filed with the collector and the tax paid according to the schedule.